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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) No. CR-07-00503 RMW  
11 )  
12 Plaintiff, ) DECLARATION OF COUNSEL IN  
13 ) SUPPORT OF DEFENDANT'S NOTICE  
14 ) AND MOTION TO CONTINUE  
15 ) SENTENCING HEARING  
vs. )  
ARQUIMEDES MENDOZA-SORIANO, )  
Defendant. )  
\_\_\_\_\_  
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I., Cynthia C. Lie, hereby declare as follows:

17 1. The Federal Public Defender was appointed to represent defendant Arquimedes  
18 Mendoza-Soriano in the above-captioned matter at his initial appearance July 24, 2007.

19 2. I was first assigned to represent defendant Arquimedes Mendoza-Soriano  
20 following the completion of the Presentence Report and the departure from the Office of the  
21 Federal Public Defender of his prior counsel.

22 3. On reviewing the Presentence Report, I concluded that further fact investigation  
23 regarding Mr. Mendoza's prior felony convictions would be necessary in an effort to mitigate the  
24 impact of those prior convictions on his sentence in the instant case. The Court, government  
25 counsel and the Probation Office have accommodated two continuances of the sentencing  
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1 hearing, originally set for November 13, 2007 as the defense conducted its investigation.

2       4.     The defense has obtained documents relating to those convictions, interviewed  
3 relevant witnesses, and conducted other investigation in order to effectively prepare for  
4 sentencing. As the defense sentencing memorandum reflects, it is my professional opinion that  
5 Mr. Mendoza's prior conviction for Rape of an Intoxicated Person in violation of California  
6 Penal Code Section 261(a)(3), was constitutionally deficient. Since filing the memorandum, the  
7 defense has obtained further information that would tend to support this position.

8       5.     Although a successful habeas petition as to only that one conviction would not  
9 alter the offense level calculation, I believe that it would result in a significant reduction in Mr.  
10 Mendoza's Criminal History Category, from Category V to Category III, resulting in a guideline  
11 range of 46-57 months, in lieu of the current range of 70-87 months. It would also directly  
12 impact one rationale advanced by the Probation Office for its mid-range sentencing  
13 recommendation.

14       6.     On January 23, 2008, I met and conferred telephonically with government counsel  
15 regarding the possibility of a continuance of the sentencing hearing for the purpose of allowing  
16 Mr. Mendoza to bring a collateral challenge to that prior conviction in the San Joaquin Superior  
17 Court. Although both parties remain concerned about how long the state court would require to  
18 rule on such a petition, the government did indicate that it would not be opposed to a brief  
19 continuance to permit the defense to begin the process and determine how much additional time  
20 would be required to complete the habeas process. The government declined to speculate  
21 whether the outcome of such a petition might affect its sentencing recommendation.

22       7.     On January 25, 2008, I met with Mr. Mendoza, who indicated that he also would  
23 authorize me to seek a continuance for this purpose. I left a message that day for government  
24 counsel, the Probation Office and the Court indicating that I would be bringing the instant motion  
25 to continue.

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2 I declare under penalty of perjury that the foregoing facts are true and correct and of my  
3 personal knowledge

4 Executed this 25<sup>th</sup> day of January 2008 in San Jose, California.

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s/  
6 CYNTHIA C. LIE  
7 Assistant Federal Public Defender

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